BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of	)	
	)	
Petition of Bell Atlantic Telephone	)	
Companies for Forbearance from Regulation	)	
as Dominant Carriers in Delaware,	)	CC Docket No. 99-24
Maryland, Massachusetts, New Hampshire,	)	
New Jersey, New York, Pennsylvania,	)	
Rhode Island, Washington, D.C., Vermont,	)	
and Virginia	)	

Comments of the Association for Local Telecommunications Services
in Opposition to the Petition for Forbearance

The Association for Local Telecommunications Services ("ALTS"),[1] pursuant to Public Notice DA 99-224, released January 21, 1999, and Public Notice DA 99-447, released March 3, 1999, hereby files its initial comments in opposition to the petition of the Bell Atlantic Telephone Companies ("Bell Atlantic") asking the Commission to forbear from price regulating Bell Atlantic in the provision of "special access services" in the states in which Bell Atlantic provides such services. This is the fourth of five petitions filed by a Regional Bell Operating Company seeking virtually the same Commission ruling for either a specific area or its entire service area.[2] And, for virtually the same reasons that the Commission should deny the other

[1] ALTS is the national trade association representing facilities-based competitive local exchange carriers.

[2] See Petition of U S WEST Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA, CC Dkt No. 98-157; Petition of the SBC Companies for Forbearance from Regulation as a Dominant Carrier for High Capacity Dedicated Transport Services in Specified MSAs, CC Dkt No. 98-277 (filed December 7, 1998); Petition of US WEST Communications, Inc. For Forbearance from Regulation as a Dominant Carrier in the Seattle, Washington MSA, CC Dkt 99-1: In the Matter of Petition of Ameritech for Forbearance

petitions, the Commission should deny the instant petition.

The Bell Atlantic petition asks that the Commission, pursuant to Section 10 of the Communications Act of 1934, as amended, exercise its authority to forbear from rate regulating its special access services in the twelve state jurisdictions in which it provides service.[3] Bell Atlantic's primary argument is that it lacks market power in the special access[4] market because approximately 90 percent of its special access customers have a competitive alternative available. Therefore, reasons Bell Atlantic, rate regulation is not necessary to ensure that Bell Atlantic's rates are just and reasonable and not unjustly discriminatory. Bell Atlantic also asserts that in fact the Commission's pricing rules prevent consumers from obtaining the best possible prices from Bell Atlantic and that forbearance from rate regulation will allow greater price competition among all providers of special access services.

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from Dominant Carrier Regulation of its Provision of High Capacity Services in the Chicago LATA, CC Dkt 99-65 (filed Feb. 5, 1999).

[3] Despite the caption of Bell Atlantic's petition which states that it is seeking forbearance from regulation as a dominant carrier, Bell Atlantic states in the petition that it is not requesting classification as a nondominant carrier (Petition at note 3). Therefore, it states that its request does not seek either mandatory or permissive detariffing of it special access service. Rather Bell Atlantic seeks "forbearance from the rate structure rules in Part 69 and the rate level rules in Part 61 . . . [and forbearance] from applying its tariff filing rules so that Bell Atlantic can file tariffs for special access services on one-day's notice, without cost support or other supporting documentation. Id. at 2-3.

[4] The affidavit of Michael McCullough describes special access services as "dedicated circuits between an IXC's point of presence (POP) and a customer's premises, between two POPs, or between customers' premises. . . . Special access circuits can be provided in wither analog or digital formats." We note that in this regard, the Bell Atlantic petition differs somewhat from the previous petitions filed by Regional Bell Operating Companies. The previous petitions filed asked for regulatory relief for "high capacity access and dedicated transport for switched access" (U S WEST), or for "high capacity dedicated transport services" (SBC).

I. THE COMMISSION SHOULD NOT CONSIDER THE BELL ATLANTIC PETITION OUTSIDE OF THE ACCESS CHARGE REFORM PROCEEDING.

The Commission has an ongoing proceeding in which issues of pricing flexibility for ILEC access services are raised. In order to conserve Commission resources and preserve the integrity of the Commission's procedural processes, the Commission should consider the Bell Atlantic request in the Access Charge Reform proceeding. It was less than six months ago that the Commission released a public notice asking parties to update and refresh the record in the Access Charge Reform and Price Cap dockets.[5] The Commission sought additional comment because several parties had filed petitions or ex partes proposing significant changes to the Commission's Access Charge Reform and Price Cap proceedings. In particular, the Commission had received proposals for pricing flexibility for ILECs. Thus, the Commission has before it an ongoing proceeding in which the remedy sought by Bell Atlantic may be adopted by the Commission. Until the Commission completes its consideration of the pricing flexibility proposals in those dockets it would be premature for the Commission to grant the Bell Atlantic petition.

As the Commission is well aware, the instant petition is the fourth of five similar petitions filed by Regional Bell Operating Companies.[6] As ALTS predicted several applications

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[5] Public Notice FCC 98-256 (released October 5, 1998). See Access Charge Reform, CC Dkt No. 96-262, 12 FCC Rcd 15982 (1997), aff'd sub nom. Southwestern Bell Tel. Co. v. FCC, No. 97-2618 (8th Cir. Aug. 19, 1998); Price Cap Performance Review for Local Exchange Carriers, CC Dkt 94-1, 12 FCC Rcd 16642 (1997), appeal pending sub nom. USTA v. FCC, No. 97-1469 (D.C. Cir.). The Commission has received numerous comments in response to its request for updated information.

[6] See note 2 infra.

ago, if the Commission attempts to deal with each of these requests individually, rather than in the Access Charge Reform docket, it will be barraged with numerous separate petitions for forbearance that will quickly strain the Commission's already overburdened staff.

II. ANY PRICING FLEXIBILITY MUST BE PRECEDED BY AN ELIMINATION OF ALL BARRIERS TO COMPETITIVE ENTRY, AND THE ESTABLISHMENT OF SIGNIFICANT EFFECTIVE COMPETITION.

If the Commission does not defer consideration of the Bell Atlantic petition until it has adopted more general rules on regulatory relief for ILEC provision of services for which competition is developing, it must deny the petition. ALTS has always stated that its members would be the first to applaud if competition had developed to the degree that the ILECs no longer maintained market power in any market. But, none of the ILECs are there yet and Bell Atlantic, specifically, has not shown that it no longer has market power in special access services in each of the states for which relief is sought.

The Commission must be very careful in its analysis of whether market conditions are such that regulatory relief can be granted to the ILECs. As the Commission itself has recognized, the proper sequencing of ILEC pricing flexibility is critical.[7] All barriers to entry

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[7] In the First Report and Order in the Access Charge proceeding, the Commission discussed the effect that developing competition would have on the regulatory policies relevant to the incumbents and, specifically, regulatory and pricing flexibility. The Commission concluded that:

> where competition develops, we will provide incumbent LECs with additional flexibility, culminating in the removal of incumbent LECs' interstate access services from price regulation where they are subject to sufficient competition to ensure that the rates for those services are just and reasonable and are not unjustly or unreasonable discriminatory. (Order at para. 266 (emphasis added)).

must be eliminated prior to the grant of pricing flexibility and competition must be well enough established that anti-competitive conduct by the ILECs could not easily eliminate such competition. Premature deregulatory actions could easily enable the ILECs, with their tremendous market power and resources, to squash any and all nascent competition.

The Commission cannot grant regulatory forbearance under Section 10 unless it makes a finding that enforcement of such regulation is not necessary to ensure that the charges or regulations are just and reasonable and are nondiscriminatory, that enforcement of such regulation or provision is not necessary for the protection of consumers and that forbearance is consistent with the public interest.

Bell Atlantic's basic argument is that because almost 90 percent of its special access customers could be served by competing carriers either through collocation or their own facilities[8] Bell Atlantic no longer has market power and would not be able to price those services in an unreasonable or discriminatory manner.[9] Putting aside for a moment the fact that it is impossible to determine the validity of Bell Atlantic's "factual" predicate of the percentage of the

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The Commission made it clear, however, that competition must precede deregulation: "[d]eregulation before competition has established itself, however, can expose consumers to the unfettered exercise of monopoly power and, in some cases, even stifle the development of competition, leaving a monopolistic environment that adversely affects the interests of consumers." Id. at para. 270.

[8] Bell Atlantic Petition at 5.

[9] Bell Atlantic asserts that competitors have already won over 30% of the high capacity special access business. Petition at 7. It is not clear what percentage of the "special access services" market Bell Atlantic believes its competitors currently have.

market that is open to competition[10] and even assuming that all the "facts" in the petition are accurate, Bell Atlantic still has given the Commission no sufficient reason to forbear from regulating these services.

We note that the Commission did not grant significant regulatory relief to AT&T until it had lost approximately 40 percent of the market and that Bell Atlantic, by its own admission, has lost significantly less than that, or approximately 30% share of the high capacity special access market.[11] In addition, there are very big differences between the interexchange market of the 1980s and the local access market of today. The barriers to entry to the interexchange market were substantially lower than the barriers to entry to the competitive access and local exchange markets today and AT&T had less ability to discriminate or use predatory pricing against its competitors than ILECs have against their competitors. The availability of volume discounts in the interexchange market made entry into that market relatively straightforward and facilities-based interexchange carriers did not have any dependence upon AT&T facilities in the provision of their business.

In comparison, CLECs are dependent upon ILECs for interconnection and collocation of their equipment. As noted by Bell Atlantic, CLECs access their customers either through their own facilities or through collocation and use of ILEC loops. Thus, competitors often are completely dependent upon some Bell Atlantic facilities to provide their services. And, as the Commission is well aware, CLECs have had significant difficulty in obtaining adequate

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[10] Bell Atlantic has submitted several hundred pages of information about its competitors and their networks. Nonetheless, it is difficult to determine the validity of Bell Atlantic's conclusions as its discussion often lumps all facilities and services together and there is not sufficient data to support some of the conclusions.

[11] See note 9 supra.

collocation and interconnection to ILECs. Hopefully, the Commission's adoption of the First Report and Order and Further Notice of Proposed Rulemaking in CC Dkt 98-147[12] on various collocation requirements will ease the difficulty and expense that CLECs have encountered in seeking collocation in the past. Nonetheless, Bell Atlantic's ability to stifle competition in the special access market is much greater than AT&T's ability to unreasonably foreclose or deter entry or to stifle the competition that had developed was at the time the Commission granted it pricing flexibility. Therefore, at the very least, the Commission should not consider regulatory relief for Bell Atlantic or any ILEC until competitors have been shown to have effective and efficient access to ILEC networks as required by the Telecommunications Act.

Finally, Bell Atlantic has not shown that regulation is unnecessary to ensure that the charges, practices, classification, or regulations by, for, or in connection with those services are just and reasonable. Bell Atlantic seems only to argue that it has little ability to maintain prices well above those of its competitors and that consumers will not be harmed if its petition is granted. However, Bell Atlantic fails to address its ability to cross-subsidize its special access services with revenue obtained from product areas in which it indisputably retains dominant market power.

As the dominant provider of local exchange and local access services in all of the states for which Bell Atlantic seeks regulatory relief it clearly has the ability to lower prices to predatory levels, thereby destroying whatever competition may have developed. Such predatory pricing might benefit consumers in the short term, but clearly would not be in the consumers' best interests in the long run. ALTS is not contending that regulatory forbearance for any service

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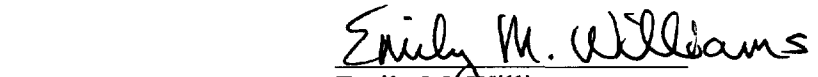
[12] See Report CC No. 99-6 (released march 18, 1999).

is inappropriate until the ILECs are non-dominant in all services, but certainly the ability to cross-subsidize from non-competitive services must be considered.[13] Bell Atlantic provides no information as to the percentage of its revenues that are derived from the special access services and thus it is impossible to determine or analyze the extent to which it can use its monopoly revenues to offset predatory prices.[14] Predatory pricing would be especially likely to succeed in discouraging new entrants in the local access and local exchange markets where the initial investment required to enter the market is substantial.

CONCLUSION

The Commission should deny the Bell Atlantic application. The Commission already has an open proceeding in which the Commission can consider taking small steps to forbear from applying certain regulations if that becomes appropriate. In addition, Bell Atlantic has not satisfied any of the statutory prerequisites for grant of forbearance.

Respectfully Submitted,



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[13] Cf. In re Southwestern Bell Telephone Co., CC Dkt No. 97-158 (released November 14, 1997), ("Allowing SWBT to respond to RFPs before its market is open to competition creates a situation where SWBT can disadvantage its rivals by denying them access to key inputs." (para. 51)).

[14] For a discussion of predatory pricing and the effects it can have on competitive entry, see Ordover, Janusz A. and Saloner, Garth, "predation, Monopolization, and Antitrust" in Handbook of Industrial Organization, (Schmalensee, Richard and Willig, Richard eds. 1989).

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Comments of the Association for Local Telecommunications Services was served March 18, 1999, on the following persons by first-class mail or by hand service, as indicated.

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